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Honorable James M. Sizemore
Commissioner
Department of Revenue
Montgomery, Alabama 36132

District Attorneys - Attorneys
Fees - Drugs and Controlled
Substances Excise Tax - Funds

The legal fees paid to District Attorneys by the Department of Revenue for drug excise tax collection may be deducted from the collection of drug taxes before the funds are remitted to the Department of Revenue.

Dear Commissioner Sizemore:

This opinion is issued in response to your request for an opinion from the Attorney General.

QUESTION

Is it permissible for the Revenue Department to enter into a contingency fee arrangement that would allow the District Attorneys to remit to the Department only the portion of the collections of drug tax remaining after deducting their fee?

FACTS AND ANALYSIS

Act No. 88-785, codified at Code of Alabama 1975, § 40-17A-1, et seq., imposes an excise tax on the possession, sale, etc., of

Honorable James M. Sizemore

Page 2

drugs and controlled substances in Alabama. The intent of the new tax is stated in § 40-17A-16 as follows:

"It is declared to be the intent of this chapter to levy this tax upon illegal drugs in an effort to compensate for the lost revenue from a section of the economy that has not heretofore borne its fair share of the tax burden. This chapter is not intended to inculcate anyone or otherwise cause any individual to incriminate himself or herself in violation of that person's constitutional rights."

Your request states:

Unfortunately, the litigation of all of the challenges to the tax have hampered our ability to collect many of the assessments. Less than \$.5 million has been collected thus far. We have found that drug dealers are especially adept at hiding their assets to avoid collection of the tax and penalties due from them. Consequently, the Department needs additional legal help with collection activity such as: discovery of assets; obtaining civil search warrants to locate hidden assets; enforcement of tax liens against competing creditors; actions to reverse fraudulent transfers of property; enforcement and defense of levies against property; and other legal matters pertaining to collection actions.

The Department's attorneys are unable to assist in these kinds of legal actions. Further, the Department may not hire additional attorneys because of a statutory limit on the number of attorneys that may be employed in the Revenue Department.

The District Attorneys of Alabama may be very helpful in these types of collection actions. They are already familiar with the drug dealers in their area. The illegal drug tax assessments are usually based on

information received from local law enforcement agencies, including the District Attorneys in many cases. They may, in fact, have particular knowledge of the drug dealers' financial affairs that could be very beneficial in collecting the assessments.

Because the District Attorneys may be able to provide helpful legal services, the Revenue Department has proposed to enter into agreements with District Attorneys through the Office of Prosecution Services for such services. Naturally, the District Attorneys will need to be compensated for the legal services performed. Most District Attorneys are in need of additional funding for drug enforcement and other law enforcement activities. Accordingly, the Revenue Department would be agreeable to compensate them based on a percentage of their cash collections of the tax assessments. This would provide them with a needed funding source and also hopefully improve the overall collection of illegal drug taxes in Alabama.

Section 40-17A-15 provides for the disposition of the drug tax proceeds as follows:

"All taxes or other funds received or collected by the department of revenue of the state of Alabama under the provisions of this chapter remaining after the payment of the expenses of administration and enforcement of this chapter shall be deposited into the state treasury to the credit of the state general fund."
(Emphasis added.)

The payment of legal fees to District Attorneys for assistance in collecting the drug excise tax is certainly an expense of the administration and enforcement of the drug excise tax within the meaning of § 40-17A-15. Accordingly, the District Attorneys may deduct their fees from the collection of drug taxes before remitting the funds to the Department of Revenue.

Honorable James M. Sizemore
Page 4

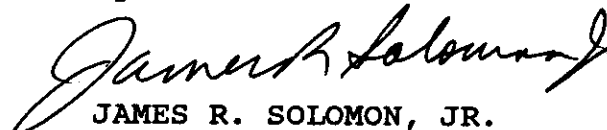
CONCLUSION

The legal fees paid to District Attorneys by the Department of Revenue for drug excise tax collection may be deducted from the collection of drug taxes before the funds are remitted to the Department of Revenue.

I hope this sufficiently answers your question. If our office can be of further assistance, please do not hesitate to contact us.

Sincerely,

JIMMY EVANS
Attorney General
By:



JAMES R. SOLOMON, JR.
Chief, Opinions Division

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